
**COMMISSION MEETING
THURSDAY, APRIL 11, 2002
DRAFT MINUTES**

Chair Orr called the meeting to order at 1:30 p.m., at the Heathman Lodge located in Vancouver and welcomed the attendees. He then introduced the members and staff present.

MEMBERS PRESENT:

COMMISSIONER GEORGE ORR, CHAIR;
COMMISSIONER CURTIS LUDWIG, VICE CHAIR;
COMMISSIONER LIZ McLAUGHLIN;
COMMISSIONER JANICE NIEMI;
COMMISSIONER ALAN PARKER (arrived at 2:00 p.m.);
SENATOR MARGARITA PRENTICE;
SENATOR SHIRLEY WINSLEY;
REPRESENTATIVE CHERYL PFLUG;

OTHERS PRESENT:

RICK DAY, Executive Director;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
ROBERT BERG, Deputy Director, Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant

1. DIRECTOR'S REPORT AND REVIEW OF AGENDA:

Rick Day, Director, reviewed the agenda for Thursday and Friday and noted there were no changes from the posted agenda. Director Day called attention to correspondence from Don Kaufman, representing the charitable gambling interests, in response to a request from Commissioner Ludwig last month for information about the new Bingo legislation, and the dynamics of how the Bingo legislation was able to pass. Director Day reported on the following issues.

- A) Legislative Wrap-up: The implementation of HB 2918 has had the most significant potential for rule writing changes to the current Bingo laws. There were two limitations in the old law: licensees could not conduct Bingo for more than three days per week; and licensees could not allow Bingo to be conducted at their Bingo hall more than three days a week. The new law removes both of those limitations, and licensees will be able to allow their premises to be used or to conduct Bingo seven days a week. Staff will draft rules for consideration to implement the change in statute. Staff has already initiated a process with the licensees to begin brainstorming and exploring issues, and staff hopes to present a draft for the May study group discussion, and to present the rules package to the Commission in June.

The Big Game bill was signed and passed into law. Funds totaling \$1 million a year for a treatment program were originally proposed, but ended up at \$500,000 per year. The Gambling Commission section that pertained to treatment education was removed.

Staff will be required to write a short rule for the Fingerprint bill that will clarify who the agency will require fingerprints from. The rule will mirror present practices, however, the law requires the rule to be written. **Director Day** thanked Senator Prentice for her support in helping the agency get this particular legislation passed.

- B) Schedule of Remaining Agency Budget Planning & Meetings: **Director Day** outlined the agency's schedule of budget meetings. Staff has already completed an initial review for the next biennium, Budget Development 03-05; however, the original strategic planning process has been delayed. Plans include updating the existing strategic plan, and to initiate a longer-term grassroots-type strategic planning process with agency staff throughout the rest of this year and into next spring. Staff must first complete their review and update revenue projections. A draft outline of the direction for the 03-05 biennium proposal is scheduled for presentation at the June meeting. The proposal will include a description of where the agency plans to take the necessary budget reductions to bring expenses down in order to accommodate the legislative cut and pending transfer of \$2.45 million of funds. **Director Day** noted there is evidence that there will be some revenue adjustments downward, particularly in the card room employee revenues. However, the total revenue picture has not yet been completed. He affirmed that staff would have quite a project that will no doubt significantly impact the agency in making the necessary reductions to meet the legislative mandate.
- C) Agency Conference Update: The 2002 agency conference has been postponed and is tentatively rescheduled for the spring of 2003. The original intent was to have Commissioners and staff work together this fall to develop a strategic plan. Due to the budget cutbacks, much of the strategic plan development will be facilitated within existing regional and unit meetings, rather than at the agency conference.
- D) Free Spin Update: **Director Day** noted there was a Request for Declaratory Order regarding the Free Spin machine. The letter included in the agenda packet sets forth a list of informational items requested by the Commission. Some information was received just today, however, staff has not had time to verify if all of the information requested has been provided.
- E) Lynnwood Office: Although informal discussions have taken place to move the Lynnwood office to Everett, a formal lease has not yet been signed. Everett lease rates are \$1.50 per square foot less than the existing rates in Lynnwood. Depending on the trends, staff will be looking at consolidating the Bellingham and Everett offices once the Bellingham lease expires, in order to save even more funds over the long term.
- F) Compact Amendments for the Puyallup Tribe of Indians and the Tulalip Tribes: **Director Day** noted a brief summary for the Puyallup and Tulalip Compact amendments were included in the agenda packet. The amendments mirror the Muckleshoot amendments. A hearing is scheduled for April 22nd at the Renton City Hall. The Compacts will be before the Commission at the May meeting.
- G) Administrative Updates and News Articles: **Director Day** reported the agency combined and settled seven cases with the various Silver Dollar operations. Because it was a large case, and because it was an extremely important issue to the Commission (the need to effectively report loans and finances that goes to the heart of the agency's regulation), the agreed upon settlement was \$245,500 plus costs. The settlement included the addition of two positions to the company that will help monitor and ensure compliance in the future.

Director Day reported that once again there is no new activity on Federal legislation. He drew attention to five news articles that directly affect the Commission contained in the agenda packet.

2. New Licenses, Changes, and Tribal Certifications:

Commissioner McLaughlin made a motion seconded by **Commissioner Ludwig** to approve the new licenses, changes and tribal certifications listed on pages 1 through 16 of the agenda packet under License Approvals. *Vote taken; the motion carried with four aye votes.*

3. Group IV Qualification Review: 40 et 8 #99, Vancouver:

Bob Berg, Deputy Director, reported this organization was formed in 1933. Their mission is to foster Americanism through participation in various community functions and to serve the needs of veterans by supporting veteran's

organizations. They have been licensed by the Commission since 1974 and the organization has 251 active members and is governed by a board of 12 members. This organization maintains a community service club in Vancouver and also provides charitable services through contributions and scholarships. In addition, they maintain a rebuilt locomotive that participates in various community activities and supports a youth athletic program including the sports of soccer, basketball, and baseball. For the fiscal year ended August 31, 2001, this organization met all requirements for both program services and supporting services compliance and did not have excessive reserves.

Based on staff's analysis of the financial statements, narrative and supplemental information provided with their application, the organization made progress toward accomplishing its stated purposes. 40 et 8 #99 is qualified as a bona fide charitable nonprofit organization for purposes of conducting authorized gambling activities. Staff recommends that 40 et 8 #99 be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington.

Connie Sorenson, Primary Bingo Manager; introduced **Paul Mason**, Chief Executive Officer. **Commissioner McLaughlin** indicated that she was amazed to see that they made more money than last year and asked for an explanation on how they accounted for the increase. Ms. Sorenson explained it as "luck."

Commissioner Ludwig observed that Vancouver seems to be doing better in Bingo than the rest of the state. He asked if geography was part of the reason. **Ms. Sorenson** affirmed that geography was important. **Bob Berg**, Deputy Director, noted that Vancouver does not allow public card rooms in its jurisdiction and unincorporated Clark County also does not allow public card rooms in its jurisdiction. He believed the closest tribal casino was the Lucky Eagle operated by the Chehalis Tribe just north of Centralia. **Chair Orr** encouraged them to keep up the good work.

Commissioner McLaughlin made a motion seconded by **Commissioner Ludwig** to approve 40 et 8 #99 located in Vancouver as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington. *Vote taken; the motion passed with four aye votes.*

Loyal Order of Moose #1774, Vancouver:

Bob Berg, Deputy Director, reported this review is for the year ended April 30, 2001. The organization was formed in 1957. Their mission is to unite their membership with fraternity, benevolence and charity; to assist their families in times of need; and support charitable community programs. They have been licensed by the Commission since 1974 and have over 1,300 active members. The organization's programs include DARE (Drug Abuse Resistance Education) Program; Youth Awareness and Youth Sports; Boy and Girl Scouts sponsorships; support of senior food programs and rehabilitation services, as well as community gift baskets, holiday parties, along with support of various other community services. For the fiscal year ending April 30, 2001, the organization met all Commission requirements for both program services as well as supporting services compliance and did not have excessive reserves.

Based on staff's analysis of the financial statements, narrative and supplemental information provided with their application, the organization made progress toward accomplishing its stated purposes. The Loyal Order of Moose #1774 is qualified as a bona fide charitable nonprofit organization for purposes of conducting authorized gambling activities. Staff recommends The Loyal Order of Moose #1774 be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington.

Arnold Burnett, Lodge Administrator, was present. **Chair Orr** commented that it looked like their organization was doing a good job. **Mr. Burnett** affirmed they were busy and their membership increased dramatically after their remodel five years ago.

Commissioner Ludwig made a motion seconded by **Commissioner McLaughlin** to approve The Loyal Order of Moose #1774 located in Vancouver as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington. *Vote taken; motion passed with four aye votes.*

4. Group V Qualification Review:

Silver Buckle Rodeo Club, Vancouver:

Bob Berg, Deputy Director, reported that this organization's fiscal year ended on June 30, 2001. This organization was

formed in 1983, and their mission is to encourage and support participation of youth in equestrian events and studies. Licensed by the Commission since 1984, this organization has 15 active board members including 4 officers. They maintain two arenas—livestock barns, other buildings, and various livestock on their 60 acres located in the area of Vancouver, Washington. Youth participate in equestrian activities including youth champions, kids' night, and expanded programs provided year around. Staff analyzed the operation and found that this organization met all requirements for program services as well as supporting services compliance. The organization did not have excessive reserves.

Based on staff's analysis of the financial statements, narrative, and supplemental information provided, the organization made significant progress toward accomplishing its stated purpose. Silver Buckle Rodeo Club is qualified as a bona fide nonprofit organization for purposes of conducting authorized gambling activities. Staff recommends Silver Buckle Rodeo Club be approved as an athletic organization and be authorized to conduct gambling activities in the state of Washington.

Cindy Arnold, Executive Director Operations Director and **Mary Merkle**, Primary Bingo Manager came forward. **Commissioner Ludwig** congratulated the organization about the financial improvement they were continuing to make. Ms. Arnold thanked the Commissioners and distributed pictures of the completed indoor riding arena and horse barn.

Commissioner Ludwig made a motion seconded by **Commissioner McLaughlin** that the Silver Buckle Rodeo Club be approved as an athletic organization and be authorized to conduct gambling activities in the state of Washington. *Vote taken: the motion passed with four aye votes.*

Chair Orr called for a recess at 2:10 p.m. and reconvened the meeting at 2:25 p.m., he then welcomed Commissioner Parker to the meeting.

5. Staff Report: Gambling License Certification Program:

Derry Fries, Assistant Director, Licensing, reported that earlier in the meeting, the Commission approved several licenses via the Commission Approval List, and later they would be considering a formal presentation by staff. While staff provides pre-license reports, the reports do not give a complete explanation of the entire licensing investigation process. Mr. Fries explained the purpose of the presentation was to provide a brief overview of the process used to determine the suitability of license applicants. While the briefing focuses on commercial applicants, much of the process is applicable to charitable, nonprofit, and Class III gaming applicants.

The Gambling License Certification Program was codified by rule, and is a program that is used to investigate license applications. Staff assesses and evaluates the applicant's qualifications against the standards of the Gambling Act of 1973 as revised, or RCW 9.46. In order to be licensed, each applicant must meet full qualifications. All applicants and those with an interest in the applicant must successfully meet eligibility and maintain that eligibility throughout their license year.

Some years ago, the Commission established a basic policy to conduct thorough investigations, and license only those qualified applications. However, at the same time, the Commission didn't want to hold up applicants that were fully qualified. Licensing is normally the first point of contact in the Gambling Commission. It takes the applicant from no regulation to a very controlled regulatory environment as mandated by the Gambling Statute. A regulator focus has been established on the following entities: Manufacturers, distributors, service supplies, (which includes financiers, management companies, consultant and advisory services, training individuals to conduct authorized gambling activities, and assemblers of components of gambling equipment), and operators of gambling activities and all the employees of those mentioned.

Staff investigates substantial interest holders, which includes all persons having interests in the applicant: 10 percent or above of privately-held corporations stockholders, 5 percent or more in a publicly-traded corporation, officers, directors and managers of the entity, those individuals receiving profits or receiving profits directly or indirectly, and the spouses of all those mentioned.

The statute gives the Commission broad authority. The initial application for a gambling license requires the submission of personal and business information which includes: positive ID, type of business and structure (sole proprietorship,

partnership, corporation or limited liability company), location of the business and the Unified Business Identifier. The application also requires a list of all owners, managers and employees, a floor plan of the entire facility and property boundaries, all lease and rental agreements for equipment and building (if any), all contracts for service, a Financial/Source of funds statements on all substantial interest holders, Personal/Criminal history statements on all substantial interest holders, a registration certificate with the Washington Secretary of State Office and all licenses and permits such as a Business License or Liquor License, and fingerprints on all substantial interest holders.

Since 1987, the agency has partnered with the Liquor Control Board and the Lottery in developing joint forms for the Personal/Criminal History Statements, Financial Statements and Source of Funds Statements, all of which are still in use today.

During the course of the licensing investigation, staff will ensure that each applicant is engaged in the selling of food and/or drink if it's a Punchboard/Pull-tab and Public Card Room License as required by the statute. Staff ensures that an applicant or any substantial interest holders do not have any disqualifying criminal background. They will verify sources of all funds to start up and operate the business and the activity. They will verify ownership of the business, the entity being licensed, and the property. Staff will contact several people throughout the process—everything from the Liquor Board to Master License Service, DOL, WSP, LEIU out of California, IRS, DOR and other local, state, tribal or federal entities. Staff has access to several databases. Since 1973, the agency has amassed intelligence information to enable self-checking.

On high-level investigations such as manufacturers, distributors, services suppliers, and house-banked public card rooms, agents from the Commission's financial and investigation unit routinely conduct on-site reviews to verify the application product information. Several agency staff members are involved in licensing investigations. These staff are highly qualified. They go through 2,080 hours of in-house training. The agency also hires special agents with a bachelor's degree in accounting, finance, business, public administration or basic law enforcement training, or agents with specialized skills. We have special agents on staff that are CPA's, CFE's (certified fraud examiners), and many commissioned law enforcement officers. If the application is a house-banked public card room, agents from the Field Operations Division conduct a very detailed on-site investigation, known as a Pre-Operational Review and Evaluation (PORE) where each applicant must demonstrate their ability to comply with the rules of the Commission. Areas inspected are the accounting and administrative controls, forms and records, surveillance, organization of the gaming operation, game rules, types of games including table layouts and other equipment or supplies to be used, hours of operation, and staff will review and verify the physical layout of the house-banked facility.

Once everything is completed, the applicant goes through a final review and evaluation. At that point, staff would either schedule the applicant for a Commission meeting or place them on the Commission approval list for approval.

Commissioner Niemi asked why staff also investigates the spouse. **Mr. Fries** answered that it was because the state is a community property state and by the Commission's rules, they've considered the spouse to be a substantial interest holder. Commissioner Niemi thought the spouse would have a substantial interest in the profits or the losses after they had been made, however, she asked why the spouse would have to be investigated if the spouse is not involved in the business. She gave an example of a spouse having a record that would be such that the investigator would not approve of that person if that person was the person who wanted to run the organization. Mr. Fries affirmed that agency WACs require that a spouse maintain the same qualifications as the applicant themselves. Commissioner Niemi asked why a spouse would have to be investigated and why would someone lose the opportunity to be approved if that spouse had something like a criminal record, that would not be approved if the spouse were requesting it. **Jerry Ackerman**, Assistant Attorney General, responded that the rules predate him, so he did not know what the discussion was at the time they came into effect. He imagined that the reason for that investigation would be because it's a community property state, and he assumed that the concern is that community assets would be used or pledged as part of the financing for the operation. Mr. Fries affirmed.

Chair Orr said he assumed that it's not unlike the PDC -- where they must identify the assets of their spouses.

Commissioner Niemi noted that one would not identify the assets of their spouse unless they are specifically only your spouses and not yours—unless they are not community property. **Mr. Ackerman** believed the purpose of the background check is to ascertain the background of individuals that are going to have an ownership or financial interest in the operation. It is to keep people with an undesirable background from being involved in gambling operations.

Commissioner Niemi mentioned that when there were problems with the assets of someone involved in drug sales; specifically, if one lived in Eastern Washington and had a farm, and was growing marijuana, whether the farm could be seized, which would be half owned by the spouse. The answer was always no, if the spouse had no reason to know what was going on. That component concerned Commissioner Niemi about this sort of investigation. She explained that language was put in the statute so that wouldn't happen. Commissioner Niemi believed that a spouse had to have some knowledge or something beyond just being a part owner of assets to be involved in an investigation. She asked if anyone had ever been turned down because a spouse had a criminal record that was inappropriate. **Mr. Fries** affirmed. Commissioner Niemi thought that was inappropriate. Mr. Ackerman agreed with Commissioner Niemi, but pointed out that for forfeiture cases, there's a specific innocent owner built into the statute.

Ed Fleisher, Deputy Director, explained that the rationale is the concern about the potential for hidden ownership where one would have their spouse hold title to the property rather than themselves, if they had a felony. The agency also takes a conservative position about people with criminal backgrounds being involved in gaming. The specific WAC is 230-04-170, which addresses a person that maintains a marital community has to qualify the same as the spouse for ownership, not for employees, but for ownership of a gambling activity. **Mr. Fries** reported that any unusual situation is decided on a case-by-case basis. **Director Day** emphasized this particular section is important to the effective regulation of gambling. Gambling is a privilege, and it comes with more restrictive requirements. The Commission has broad authority to essentially set those qualifications from statute into rule. There's no question that past history has demonstrated that one classic way to get a poor criminal influence into a business is through that kind of relationship—by bringing a spouse into a fraudulent or fronting perspective. The kind of ability to look at the qualifications deeper than just what is on the face of the application by the person who submitted the application are key to preventative regulation, and to keep the criminal influences out of gambling. **Commissioner Niemi** affirmed the argument on privilege was a good one.

House Banked Card Room Report:

Mr. Fries reported that there are currently 70 licensed establishments, 62 of which are at Phase II. Two Phase II's will be considered today. There are nine pending applications in this report. Thirteen card rooms have closed for various reasons since April of 1999, and 81 applications have been processed.

6. Manufacturer Reviews:

Thomas F. Perkins, dba Bonus 6 Stud Poker, Douglasville, Georgia:

Derry Fries, Assistant Director, reported this manufacturer has applied for a Class B manufacturer license to market a new card game. Thomas F. Perkins is the sole proprietor of Bonus 6 Stud Poker. The main office is located in Douglasville, Georgia. The registered agent is Steve Tamara of Tamara Gaming, Inc. in Seattle, Washington. Special agents reviewed and approved the game for play in Washington. No onsite investigation was conducted due to the company's small size and lack of sales in Washington. Personal and criminal history checks were completed on both Mr. Perkins and his wife, and no disqualifying information was found. A review and analysis of Mr. Perkins' personal and company financial records and other documents did not reveal any disqualifying information. This organization is currently approved for use in four states: Mississippi, Nevada, Missouri, and Colorado. Colorado, Missouri and Nevada approved the game, but did not require Mr. Perkins to be licensed. The Mississippi Gaming Commission licensed Mr. Perkins to market and distribute his game. No disqualifying information was found in Mississippi. The only funds that were required to start up or to create Bonus 6 Stud Poker was the payment for the patent application. There were no other costs for marketing, other than the payment of license fees to the Washington State Gambling Commission.

Based on staff's review of the application, financial documents and criminal background information, the applicant qualifies for a manufacturer license in Washington. Based on this investigation, staff recommends approval of Mr. Thomas F. Perkins, dba Bonus 6 Stud Poker for a Class "B" manufacturer license. Mr. Perkins was introduced.

Commissioner Ludwig asked Mr. Perkins to explain the game of Bonus 6 Stud Poker. **Mr. Perkins** first gave some background. He learned that one could lease games and he decided to invent a game with all of the attributes of a player-friendly game. Those consisted of three basic tenets: 1) he didn't want the dealer to have to qualify, which they must do in a lot of games; 2) he wanted a bigger win frequency. Let It Ride has an 8 percent win frequency for the player. His game has a 52 percent win frequency. He wanted a game that had some table action and would be fun. 3) He wanted to put in what every player dreams about. Players want a second chance to win, which is what the Bonus 6 is. He built his

game around the same logic used in insuring an automobile against damage. His game includes paying an insurance premium with each hand. If his hand loses, and he has insurance on it, he can get an extra card. That extra card is the Bonus 6. His game has a win frequency in the first five cards of 24 percent. With the sixth card, it goes up to 52 percent. **Commissioner Ludwig** asked if the player could see the first five cards before insuring it, and whether one can only insure it if they are a loser? Mr. Perkins said one could see the first five cards and they only get the extra card if they have a losing hand.

Commissioner McLaughlin asked if he was the manufacturer. **Mr. Perkins** said he doesn't manufacture anything because he doesn't have a physical product. His product is strictly intellectual. He merely leases a nonexclusive right to casinos to use the intellectual property. He noted this is the first state where he has had to get licensed as a manufacturer. He explained that Paulsen Gaming Supply puts his game on felt, and they are also working with the local manufacturer in Washington State. **Commissioner McLaughlin** asked whether the four states that have issued licenses are also playing the game. Mr. Perkins affirmed it has been played in Colorado for four and a half years and that it is very popular. Commissioner McLaughlin asked several other questions about percentages and Mr. Perkins explained that the frequency of how many times a player will win out of a total of 100 percent of play, they will win 52 percent of the time. The House gets its money in order to even the playing field there—it gets it from the insurance, which is a fee; it's not a bet and it goes directly to the House. Mr. Perkins reiterated this is an insurance premium similar to car insurance; if you don't have damage, you don't collect insurance. **Senator Winsley** asked how he marketed the cost of the premium. Mr. Perkins explained the insurance equals the ante.

Mr. Perkins shared some personal information about himself. He reminded the audience that people can and do change. Twenty-two years ago he was an alcoholic and drug addict who lived under a bridge in Texas. He said background checks are good to do one at a time because life does change and situations in life changes. He also noted that when a job is well done, no one ever mentions when things go right. He praised Commission staff for doing an outstanding job. He specifically mentioned Shanna Lingel, Keith Wittmers, Michelle Mack, and Lynn Clevenger, all of whom he thought should be commended for representing the Commission in a professional and pleasant manner making this a good experience for him. There were no further questions or comments.

Commissioner Parker made a motion seconded by **Commissioner Ludwig** to approve Mr. Thomas F. Perkins, d/b/a Bonus 6 Stud Poker for a Class "B" manufacturer license. *Vote taken; the motion passed with five aye votes.*

McCall Enterprises, Vancouver:

Derry Fries, Assistant Director reported that McCall Enterprises has applied for a Class "B" manufacturer license to sell a new card game, Red Black Jack. McCall Enterprises is owned and operated by Mr. Christopher McCall, a sole proprietor located in Vancouver. Mr. McCall has a provisional patent on his game which allows full patent protection for a 12-month period for a smaller fee to the United States Patent Office.

Special agents confirmed Mr. McCall's provisional patent on Red Black Jack and began a financial and criminal history background investigation. Staff reviewed the Red Black Jack game and approved it for play in Washington. No onsite investigation was conducted due to the company's small size and lack of sales in Washington. A personal and criminal history background check on Mr. McCall did not reveal any disqualifying information. In addition, a review and analysis of both his personal and company financial records and other documents did not contain any disqualifying information. Mr. McCall is not licensed in any other jurisdiction at this time. He is a licensed card room dealer and employee at the New Phoenix Casino in LaCenter. Funds required to start up to create and market McCall Enterprises were in payment for the patent application. There were no other costs for marketing or payment of license fees except for payment of license fees.

Based on staff's review of the application, financial documents and criminal background information, the applicant qualifies for a manufacturer license in Washington. Based on this investigation, staff recommends approval of McCall Enterprises for a Class "B" manufacturer license. Mr. McCall was introduced and came forward to answer questions.

Commissioner Ludwig asked him to explain the Red Black Jack game. **Mr. McCall** said it is a Black Jack side bet based on the regular Black Jack game. He said he likes to give a player options. He has split it into two different bets—a red one and a black one; which gives a player an option, and it pays according to whether or not their first two cards are red or black. There were no further questions or comments.

Commissioner Ludwig made a motion seconded by Commissioner Parker to approve McCall Enterprises for a Class “B” manufacturer license. Vote taken; the motion passed with five aye votes.

7. Phase II Review:

Nob Hill Casino, Yakima:

Susan Blanchette, Special Agent, reported that Nob Hill Casino is a commercial restaurant, lounge, bowling center and house-banked card room located in Yakima. The business is held by Nob Hill Incorporated, and together, James and Susan Kent own 50 percent, and Harry Mickelson, Vice President, owns the remaining 50 percent. This organization is not involved in any other house-banked card rooms. They began conducting their house-banked activities on October 9, 2001. Currently, they have eight house-banked tables which include three Match the Dealer Blackjack, Two Spanish 21, and one each of Three-Card Poker, Fortune Pai Gow, and Let It Ride.

Staff conducted a comprehensive investigation including a review and observation of the operating procedures for the four key operating departments. The review team compared the licensees’ actual operating procedures to those documented in the WAC rules manual. The licensees’ written internal controls were also compared to the card room rules to ensure compliance and consistency. A review was conducted on the gaming and organizational records to ensure record-keeping compliance. During that review, no hidden ownership or unreported third party financing was detected. The violations that were noted during the review were verified as corrected during a follow-up inspection. The city of Yakima was contacted to verify that the licensee is current on their gambling taxes and the Yakima Police Department was also contacted to verify there had been no adverse impacts on the community because of the card room. At this time, based on the results of the reviews, staff recommends approval for Nob Hill Casino to operate at Phase II wagering limits. Mr. Max Faulkner, Card Room Manager was present. There were no questions or comments.

Commissioner Ludwig made a motion seconded by Commissioner Parker to approve Nob Hill Casino located in Yakima for Phase II wagering limits. Vote taken; the motion passed with five aye votes.

Commissioner McLaughlin noted that in all the Phase II reviews, the police departments have been contacted to find out if there were any negative effects on the community due to their presence. All say there has been no unfavorable activity attached to their existence, and yet two months ago there was a report about all this crime in card rooms. She asked for an explanation. **Mr. Berg**, Deputy Director, said the agents request that information from the local police. It’s basically a change from the base time when the facility became a house-banked card room, until the Phase II is completed. In other words, since the facility has been operating, has that had an adverse impact on the community. The work that the agents did with the facilities was in a stretch of time for a period of two or three years, in some of the cases before those facilities were house-banked facilities. They are better regulated and in better places now than they used to be, and when you ask that question of local law enforcement, that is the answer you usually get. The data that was presented went back further in time.

Senator Prentice affirmed that when the Legislature did their interim studies on gambling, this was a question that was asked repeatedly of law enforcement. Uniformly, they said there had been no additional problems and, in fact, when they were in Spokane, the response in writing was that there was less because people were working now and they weren’t fighting about money. She addressed her personal experience about card rooms in her neighborhood. When Skyway Bowling Lanes and Rail Club opened, because they were in unincorporated King County, they never had enough deputy sheriffs around. They had increasing gang activity. She affirmed she has had the ability to compare the past with now. Now the areas feel safe and the card rooms have, in effect, supplemented law enforcement.

Classic Casino & Bistro, Chehalis:

Susan Blanchette, Special Agent, reported that the Classic Casino & Bistro is a commercial restaurant, lounge and house-banked card room located in the city of Chehalis. The facility is owned by M&R Euro Import LTD. Ownership consists of Michel Rey and Renee Rey each owning 50 percent. They are not involved in any other house-banked card room in the state and currently have a management agreement with Calabrese & Associates for the development, management and operation of the card room.

Staff conducted a comprehensive investigation including a review and observation of the operating procedures for the four key operating departments. Any violations that were noted during the review were verified as corrected during a follow-up inspection. The city of Chehalis was contacted to verify that the licensee is current on all their gambling taxes and the Chehalis Police Department was contacted to verify again that there had been no adverse impacts on the card room on the community. Based on the review, staff recommends that the Classic Casino & Bistro be approved to operate at Phase II wagering limits. **Michel Rey**, owner, came forward for questions.

Commissioner Ludwig complimented the Rey's on the excellent report with only two violations, which had been corrected. Based on his recollection, this is about as good as it gets.

Commissioner Ludwig made a motion seconded by **Commissioner McLaughlin** to approve the Classic Casino & Bistro located in Chehalis for Phase II wagering limits starting on March 22nd. *Vote taken; the motion passed with five aye votes.*

8. Other Business/General Discussion/Comments From The Public:

Chair Orr called for comments.

Delores Chiechi, Recreational Gaming Association, provided some follow-up on the comments regarding crime statistics as reported by the media a couple months ago. She noted that unfortunately, the comments that get pulled out in the newspaper or other media seem to focus on the bad points and not the good points. Reporters take the pieces that they want and report it how they wanted to. Ms. Chiechi appreciated Senator Prentice's comments and the understanding and notation by the Commission and staff that the industry is cleaning up some of the neighborhoods especially through the security and surveillance the establishments provide.

9. Executive Session To Discuss Pending Investigations, Tribal Negotiations & Litigation:

Chair Orr called for an Executive Session at 3:30 p.m. He reconvened the public meeting at 4:45 p.m. and adjourned the meeting until 9:30 a.m., April 12, 2002.

**COMMISSION MEETING
FRIDAY, APRIL 12, 2002
DRAFT MINUTES**

Chair Orr called the meeting to order at 9:30 p.m., at the Heathman Lodge located in Vancouver and welcomed the attendees.

MEMBERS PRESENT:

**COMMISSIONER GEORGE ORR, CHAIR;
COMMISSIONER CURTIS LUDWIG, VICE CHAIR;
COMMISSIONER LIZ McLAUGHLIN;
COMMISSIONER ALAN PARKER;
COMMISSIONER JANICE NIEMI;
SENATOR MARGARITA PRENTICE;
SENATOR SHIRLEY WINSLEY
REPRESENTATIVE CHERYL PFLUG;**

OTHERS PRESENT:

**RICK DAY, Executive Director;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
ROBERT BERG, Deputy Director, Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant**

10. MINUTES – March 14 and 15, 2002:

Commissioner Ludwig made a motion seconded by Commissioner McLaughlin to approve the Regular Meeting Minutes of March 14 & 15, 2002, as presented. *Vote taken; the motion passed with five votes.*

RULES UP FOR FINAL ACTION

11. Distributor & Manufacturer Credit Restrictions:

WAC 230-12-340; WAC 230-12-330; WAC 230-30-106

Amy Patjens reported that these three rules were up for final action. They were filed after the February Commission meeting. She noted there is a general prohibition on extending credit. Unlike other businesses, many aspects of business transactions are regulated because they involve gambling. The concern pertains to influence or control. These rules were up in 1997 when there were several distributors who had manufacturers and other distributors spending considerable amounts of money for pull-tabs. At the time, if a distributor became delinquent on a trade account and didn't pay within the agreed time, this was considered extending credit. The distributor was required to notify Commission staff, and then staff notified all of the manufacturers and distributors that the business was delinquent and future purchases had to be cash only. Typically, as soon as this would happen, the debt would get paid off, they would notify staff, and staff would have to again notify about 15 distributors and manufacturers that it was okay to buy under

trade account terms. This was labor intensive and staff suggested the requirement to notify the distributors and the manufacturers be removed. This proposal designates that it will be the manufacturers and distributors who will be providing the notice with a courtesy copy submitted to staff. Staff worked with the manufacturer industry on this rule, and they support the change.

WAC 230-12-340. 11(A) covers the new notice procedure and removes some of the prior details. **Ms. Patjens** pointed out that the underlined portion of Subsection 1 is language that was simply moved to a new subsection.

WAC 230-12-330 11(B) requires distributors to sell gambling products to all licensees for the same price and for the same terms. The intent is to reduce the likelihood of influence or control by a distributor favoring one licensee over others. Distributors are required to notify staff of their current price lists and of their sales. Under the prior rule, the only discounts allowed were on single sales transactions, not on multiple sales transactions. The new rule would allow multiple sales transactions, but they would be limited to sales that are made over a seven-day period. This rule change was requested by the industry. It did not impose any regulatory concerns.

WAC 230-30-106 11(C) deals with merchandise prizes. A pull-tab operator can award either cash or merchandise as prizes. These merchandise prizes are assigned winning numbers consecutively. The prize that's worth the most is assigned the lowest available winning number. The rule makes it clear that those prizes need to be numbered in the order of value, and will make auditing easier for staff to ensure that licensees account for prizes in the same manner. Staff recommends final action.

Commissioner Ludwig said that it appeared to be that the consistency facilitates the regulation in the audit. **Ms. Patjens** affirmed. **Chair Orr** called for further questions or public comment. There were none.

Commissioner Ludwig made a motion seconded by **Commissioner Parker** to adopt the distributor/manufacture rules 11A, 11B, and 11C and, the amendment from April. *Vote taken; the motion passed with five aye votes.*

12. Qualification Reviews:

WAC 230-08-255; WAC 230-04-064:

Amy Patjens reported the qualification reviews are also up for final action and were filed after the February Commission meeting. Qualification reviews have been discussed for several months. These are the larger organizations that come before the Commission each month. All nonprofits are required to show that they have made significant progress towards their stated purposes. This has become a little bit confusing, especially if an organization has administrative charges pending, or if they weren't meeting the current requirements. Under the rule in effect, staff was required to bring those before the Commission. Staff considered a program as presented to the Commissioners in November. Under that program and under the proposed rules, the larger organizations (Group IV and Group V) will come before the Commission once every three years instead of annually. These reviews will be more extensive and will focus on the actual programs that the organization is providing. There will still be the existing financial focus, but it will not be the primary focus. **Ms. Patjens** emphasized that organizations would still be required to submit financial statements once a year, and still submit quarterly activity reports. However, the organization would only come before the Commission once every three years. Organizations that have pending administrative charges would only come before the Commission after they had been resolved.

WAC 230-08-255 12(A) puts the procedures in place. WAC 230-04-064 -12(B) takes some language that was previously in the rule that has been moved to 12(A). The rest of the changes make the rules easier to read, but don't impose any new requirements. Staff recommends final action. **Chair Orr** asked if there were questions or public comment. There were none

Commissioner McLaughlin made a motion seconded by **Commissioner Ludwig** to adopt WAC 230-08-255 and WAC 230-04-064. *Vote taken; the motion passed unanimously.*

13. Staff Report On Promotional Gambling Activities:

Robert Berg, Deputy Director, reported that the Commission has been involved with discussions since August of last year with regard to gambling promotions. There was a brief submitted to the Commission in the form of a memo

providing background information detailing where promotions are, what they are, and what gifts are. That information was a culmination of meetings with representatives from the licensees as well as internal staff discussions as to what the Commission's position should be with regard to gifts and gambling promotions.

Mr. Berg addressed various premises that have existed in Commission policy for a long time. The first one is that the extension of credit loans or gifts to persons participating in gambling activities is prohibited -- it is an absolute prohibition. There have been exceptions with regard to gifts over the past five years. Bingo, pull-tab and card room licensees have been given some specific exemptions of this prohibition. These exemptions have found their way into the rules manual in various places, and it has become a bit of a headache for licensees and staff to have a clear direction and a clear line as to what is allowed and what is not allowed. That is what led to the discussions with the licensees. There were some specific requests to change the rules again to allow certain other exceptions. This caused staff to pause and look at the whole picture to see if the Commission would want to issue a philosophical policy with regard to gambling promotions, and then write the attendant rules. There is evidence for the confusion. It's been mostly in the card rooms; there's been increased activity and it reached critical mass because of the competition for the recreational gambling dollar between tribal casinos, the nonprofits and commercial operators.

In order to clarify Commission policy, staff drafted a rules package of what would be allowed for the activities the Commission regulates. Staff's position in determining what staff's recommendation would be to the Commission with regard to the philosophy and the overall policy statement was governed by a couple of things. By law, for-profit or the commercial gambling is still considered to be a commercial stimulant and not the business itself. Tribal gaming is specifically authorized by the Indian Gaming Regulatory Association (IGRA) and exists for the social purposes of the tribes as governments. Finally, the nonprofit organizations are required by law and by rule to return funds to the organization for which they work for the charitable and nonprofit purposes. The limits that staff suggested (\$500 for a promotion or a gift) are based on the legislative declaration stating that the public policy of the state of Washington is to promote social welfare and limiting the nature and scope of gaming. Mr. Berg noted that was key in terms of how staff viewed what their proposal would be and also maintain strict regulation control.

Mr. Berg reviewed some key definitions: Gifts are items that licensees give away to their customers that are not directly connected with the gambling activity regulated by the Commission. Promotions are items that are used to entice the public to play and reward loyal customers. These items are, in fact, directly associated with participating in the gambling activities such as cash giveaways, discounted play, and the gambling activity "Happy Hour." Promotional contests of chance (PCOC) are specifically authorized by statute, and are designed for a business to promote goods and services to the general public. The key is that they are open to all customers, and there must be a free method of entry. They are by statute, not regulated by the Commission unless there is some equipment involved. They are specifically allowed by statute, which was most recently amended in the 2000 legislative session.

Mr. Berg displayed an example - the Money Machine from the Riverside Casino which says "three times a night every night from 6 p.m. to midnight." Tokens are given to everybody; they go up to the machine, they put the token in. That's a true PCOC—everybody gets an opportunity. He displayed some of the most common and current promotions that are being authorized such as Happy Hour pull-tabs. Another example was a First Ace coupon, which is clipped out of the newspaper. The player has an ACE on a Blackjack game and it just increases the player's chances of winning—it's a promotion of the gambling activity. Another example is a Match Play coupon, which is a complimentary wager coupon. Basically, one can increase their bet with no risk to their own pocketbook. These are given out by commercial stimulants, perfectly within the rules, and as a part of the promotion. Another example is a combination of the two. There are some drawings that are held under the PCOC. Lotteries and those kinds of things are not allowed except in the nonprofit world, unless it is a PCOC -- the commercial operators are not allowed to do certain kinds of things that the nonprofits can.

Other promotions are discounted chips where one can buy \$50 worth of chips for \$40 during a specified period of time. There are customer appreciation card tournaments with no fee to enter, like a special prize for triple 7's on a game of "21" - and various promotions. Sometimes there are dauber food Bingo cards and other merchandise; sometimes it can be entertainment that's provided by the licensee such as music or magicians. The current rule is limited to a value of \$5 and that would change under the proposed rule. Mr. Berg also displayed a full-service coupon containing Lucky Bucks, 50 percent off a meal, and \$2 off a drink. Another promotion is lottery tickets as prizes, which is allowed. Although a gambling activity, it's one the agency does not regulate, it is regulated by the Lottery Commission. It is allowed, and

would be allowed to continue under the proposed rules staff has brought forward. **Commissioner McLaughlin** asked why this is allowed and something like giving away a pull-tab is not. **Mr. Berg** explained that staff's position (and this is something the Commission would decide through its rulemaking process), is that the prize or the end result of the gambling promotion should not be the opportunity to engage in another gambling promotion.

Mr. Berg suggested that the Commission look at this as a whole and balance where the industry is at, and evaluate what we trying to prevent, encourage, or not encourage. The reason the rules package that came forward is very conservative is because of staff's interpretation of what strict regulation and control of gambling means—that it is supposed to be a commercial stimulant to other business. **Director Day** noted that when staff discussed these rules, there was a clear effort to try to not infringe on current practice as we started drawing the policy line. **Mr. Berg** affirmed these things have crept up in a bunch of different areas, and staff has been stalling the licensees while attempting to put together this presentation. Licensees have been coming forward with some of the things that the nonprofits have, the nonprofits have their concerns, and so the goal of this exercise was to put the issue in front of the Commissioners, and then for the Commission to give staff direction.

Senator Winsley asked if there was a rule on the proportion of food and drink that's required of establishments. **Mr. Berg** said there was in the past. Commission staff spent a lot of time finding out whether the napkins were purchased for the restaurant or for something else. There were actual allocation formulas and tables that were used. The methodology was if one is primarily engaged in the food and drink business, other than the gambling, then it's almost *prima facie* or *de facto* commercial stimulant to that activity. In other words, if the primary business is selling gasoline and they happen to have some Hostess Twinkies on the shelf, they're not going to meet the commercial stimulant argument of being a food and drink establishment. But if one is in a restaurant or a cocktail lounge and in the business of food and drink, there's no proportionality analysis done. In fact, staff uses the fact of a liquor license as a *de facto* determiner that the licensee is engaged in the food and drink business. Senator Winsley noted that in reality the casino's usually have pretty fine restaurants and do sell liquor, and if they have a restaurant and a liquor license and gambling, wouldn't they promote their restaurant and cocktail lounge. **Mr. Berg** affirmed and noted there's nothing wrong with promoting not only the gambling activity but the food and beverage activity. **Ed Fleisher** added that the requirement that a business be primarily engaged in the sale of food and drink is necessary to qualify for a commercial gaming. There is no monetary test. In 1994, the Legislature changed the statute and took out an additional requirement that the gaming be incidental to the other business and left the requirement that they be primarily engaged in the sale of food and drink. Commission rules have been (for a number of years) to meet the test that the primary business other than non-gambling business, be the sale of food and drink for on-premises consumption. Commission rules assume that one is primarily engaged in the sale of food and drink if they have a liquor license.

Mr. Berg reported that currently there is a \$50 promotional maximum limit on value per person. The rule being proposed increases the limit to \$500. The Commission's options range from setting any number from zero up, or not having a number – it is a policy statement by the Commission. Something that is eliminated is the requirement for card room operators to keep detailed records. Staff is currently establishing what can be done and the parameters, which eliminates some of the record keeping currently required. By rule, staff determines what is allowed and what is not allowed, and because the rules are very general, licensees currently have to receive permission from the Commission for each and every promotion that they conduct. That is eliminated with the proposed rules.

Mr. Berg gave some samples of things that would not be allowed: hot seat drawings that are limited to casino patrons only would not be allowed under the new rules. Raffles and drawings for commercial operators are not allowed unless it's truly a PCOC. The prize or the end result cannot be the opportunity to engage in more gambling, and PCOCs cannot be combined with gambling promotions.

Mr. Berg explained that his presentation has been an interpretation of what staff has been told is important to licensees, drawings limited to casino patrons only in some fashion or manner. He affirmed the licensees do not care for the \$500 limit, nor do they care for restrictions on customer appreciation tournaments. The nonprofits want the opportunity to engage in additional gambling such as giving Bingo cards or pull-tabs as prizes in a Bingo game. **Mr. Berg** said they may give lottery tickets now and they could continue to do so even if the rules were changed because the rule addresses any activity regulated by this Commission, and the Commission doesn't regulate lotteries.

Discussion was initiated regarding giving away vehicles. **Director Day** explained that a licensee may have a promotional contest of chance, but the device used cannot be an illegal gambling device, or some form of illegal gambling device, or the gambling device has to be approved by the Commission. Sometimes the issue may not be relative to the contest of chance or the free chance to enter. It may be over the device being used and that gets confusing. **Chair Orr** asked if there were further questions and there were none.

RULES UP FOR DISCUSSION

14. Promotions for Gambling Activities:

WAC 230-12-045; 230-12-050; 230-02-145; 230-20-111; 230-30-125; 230-20-230; 230-40-800; and 230-40-897:

Bob Berg reported that there are eight rules in the package, one of which is new, two are amendments to existing rules, and five are repealed rules because of the global approach in dealing with gambling promotions.

WAC 230-12-045 - Item 14(A) is a new section. This rule sets forth parameters the licensees must follow when offering promotions in conjunction with gambling activities. Staff would no longer need to review the individual promotions, and this rule provides promotions for both commercials and charitable nonprofit licensees. Gambling promotions would be limited only to persons playing in a licensed gambling activity, and each promotional item cannot exceed \$500 in actual costs. Promotions cannot be combined with promotional contests of chance in any way. There have been three changes since the March meeting. The first, the definition of promotion and promotional contests of chance has been added, and under restrictions, the words “end result” has been added after prize to provide some clarity. Commission regulated activities has been inserted to clarify that lottery tickets as prizes or end results are not considered to be an opportunity to engage in additional gambling activity because the Commission does not regulate that.

WAC 230-12-050 Item 14 (B) is an amended section dealing with the extension of credit, loans, or gifts. This rule prohibits licensees from giving credit, loans or gifts to persons playing in gambling activities. It also sets forth several exceptions regarding gifts. Subsections 4 and 5 reference promotional gifts and promotions for gambling activities. Language regarding giving away free or discounted food or drink or merchandise as a gift has been moved to subsection 1. Language regarding promotions has been removed because all promotions are addressed under the previous WAC discussed. Currently, licensees may give away free or discounted food, drink or merchandise in conjunction with the gambling activity. Those kinds of gifts would still be allowed. However, language has been added to limit the gifts to \$500 wherein before they were not limited. Promotions were mostly at \$50; gifts were not limited at all. Furthermore, charitable and nonprofit organizations must keep a record of the gifts and receipts when the actual cost of the gift is over \$100. Licensees are already required to keep detailed records. There has been one change since March - language was added to Subsection 1 to define a gift.

WAC 230-02-145—Item 14 (C); WAC 230-20-111—Item 14 (D); WAC 230-30-125—Item 14 (E) and WAC 230-20-230—Item 14 (F) are all repealers. With this rules package, all of those activities are covered under the promotions section proposed in WAC 230-12-045.

WAC 230-40-800 - Item (G) is an amended WAC. It is a partial repealer, repealing Subsections 6 because it talks about staff approval for promotions and those are covered under WAC 230-02-145.

WAC 230-40-897—Item 14 (H) is up for repealing because that is now addressed in WAC 230-12-045 and the change would increase (as changed in WAC 230-12-045) from \$50 to \$500 and removes staff approval for each promotion. Staff recommends approval and Mr. Berg noted the rules are up for discussion only. **Chair Orr** called for questions and/or public comment.

Gary Murray, Wizards, commented that as the industry expands, there are segments of the industry that can do what others can't and vice versa. He affirmed the industries are always vying for the same gaming dollar. The industry considers the gambling dollar as the money available to be made off customers who make decisions about what they want to do. Some may go a movie, while others may choose to go to the casino. The real question is whether a promotion is making somebody spend their money in a way they really didn't want to spend it. The industry believes the whole idea behind a promotion is to get the guy who has money to spend and who is looking for recreation, to cross the street to their place instead of going to the other place. He compared it to McDonald's having the monopoly game as their promotional contest of chance so one buys their burger instead of the Whopper. The individual is still going to go

out and eat, but where, and what. Mr. Murray said that the bottom line is that the industry wants to promote and they believe it is necessary to be allowed to promote at the same level as any other legitimate business in the state. He affirmed commission staff asked the industry what they would like to see in the rule. The industry responded; they wanted to have promotional contests of chance. When commercial operators responded to staff's question, their intent was to say that they would like to see promotional contests of chance. He explained that if you go to McDonalds you can get a free entry and anybody can enter. However, if you want more entries, you must buy their product. The PCOC rule lists out that one has to buy their goods, services, or wares. That's a question that the commercial operators have had with the staff lately -- what do we offer as a gaming establishment when a customer comes and plays a game of Blackjack that wouldn't constitute giving consideration. The player is spending their time and money in order to participate in the activity. When one goes to McDonalds, they do the same thing, give money to purchase the product and they get additional entries. When one plays Blackjack, at this point in time, they cannot get an additional entry into that PCOC. Subsequently, the commercials cannot run a PCOC like Safeway, Taco Bell, or other legitimate businesses, because the commercial operators cannot use their wares to do so. It was pointed out that the commercial operator's business is a commercial stimulant. They have a restaurant, a lounge, sell cigarettes, pull-tabs, and gaming. When McDonald's does their promotion, they may promote their ice cream or they can select whatever part of their business they are promoting at that time. Currently, commercials are being told they may promote anything but the gambling part of their business. Mr. Murray questioned why this is separated. The industry is trying to say they don't want to necessarily only allow their gaming customers into the promotion -- they do want to give their best customers the best chance to win (for instance) a car.

Mr. Murray referred to the \$500 limit and a sample card game wherein their internal controls would say if a player achieved a specific hand the player wins a sports car, or if a player achieved a specific hand in a red suit they would win the red sports car -- it's perfectly legal within the rules. It's increasing the prize and it's increasing the player's reward for playing. However, if the commercials only want to do this on Mondays, they can't because then it's called a promotion. The commercials can't understand why it's a promotion and not allowed if you limit it to the time it's done rather than doing it 24 hours a day 7 days a week. Mr. Murray asked how restricting what the customer could receive during their time as a player is beneficial to the customer. He believed this was not allowing the licensees the full benefit of something the establishment may want to give, or give it a chance to give away even if they're just trying to build their business during certain hours or days. The \$500 restriction is important because it separates the two, whether it's a rule or a promotion. It's the same activity whether one can do it at a certain time or not. He appreciated that this was a very complex issue.

Mr. Murray addressed the issue of enticing the customer versus rewarding the customer for being loyal. He expressed the licensees desire to take care of their loyal customers. He questioned two new parts of the rule, under Section 2, promotional contests of chance are designed to promote goods, wares or services to the community. Mr. Murray was not sure why "to the community" was added. The other issue is the wheel spin and what is considered an additional opportunity to gamble. If the minimum a player won was \$5 and that's in addition to the money they won when they got a Blackjack, the commercial operators are being told that's an additional opportunity to gamble. The commercial operators feel the player has already won the prize and now they are going to have the opportunity to win something more, but it's varied. The commercial operators do not understand why that's an additional opportunity to gamble, when it seems to be a bonus.

Commissioner Niemi asked Mr. Murray to be specific about which rules he doesn't like and what he wants changed in those specific rules. **Mr. Murray** explained the rule that he is talking about is WAC 230-12-045 Item 4 (A), as well as the limit on the value of a promotion. Commissioner Niemi asked Mr. Murray to explain why he objects to Item 4 (A) before he moved on to the second issue. Mr. Murray responded that if an operator runs the game all the time and a player wins the car with a 7-card straight flush, it's part of the rule and part of the game which is allowed. If the operator only wants to run the game on Sundays, because Sundays are slow, it becomes a promotion, and that car exceeds the \$500 value, which is not allowable as a promotion. **Mr. Berg**, Deputy Director, explained that under the game rules the licensees file with the Gambling Commission, they could set up whatever they think the market will bear in terms of what they pay out on a prize. The reason licensees don't put those in their gambling rules all the time is because it ups the odds that that a sports car is going to get claimed. If it is designated for a very specific time period—be it five to six or one day a week when business is slow, then the operator is enticing people to come in at that time, and the overall odds of that car being won are lessened considerably. That's the distinction. The Commission will determine whether it's a difference that's important.

Mr. Murray noted the second part of his discussion relates to the PCOC, and being able to use a product provided for gambling (the deck of cards, the table, the layout, the chips, etc.) as an additional means of entry into a PCOC. That rule is not quite clear -- on the second to the last line, it says that licensees must get Gambling Commission approval in order to use devices manufactured for gambling in a PCOC. The last rule, 4 (C) that gambling promotions may not be combined with a PCOC is slightly different than actually using a gaming device in a PCOC. **Ed Fleisher**, Deputy Director, agreed they are two separate issues. Mr. Murray's question is whether one has to have a free method of entry in a PCOC. Under the law, additional entries are permissible if one purchase goods or services from the business. As Mr. Murray has said, there is the question: is playing a card game, gambling, a good, or a public service. There has been some debate. One may categorize it as a service, or not, depending on how one reads the law. Staff has put the question before the Commission in the proposed WAC 230-12-045(4) (C) which says that one cannot combine the two—that one cannot use gambling as the free method of entry for a PCOC. It makes the question of whether gambling is a service or a good moot if this rule is adopted. Mr. Fleisher commented on spinning the wheel after someone wins a Blackjack. Staff's position is that that is adding another element of chance to the game. There was consideration by the player to get to the point where they would have the opportunity to spin the wheel. Spinning the wheel is a random number generator—it's an element of chance, which makes it a form of gaming, which is not authorized by law for the commercial establishments. Staff's thinking behind that position is that you can't have at the end of the game an opportunity to spin a wheel. The authorized activity is social card games; it's not spinning a wheel or a raffle, or that sort of thing.

Commissioner Parker said he agreed with Commissioner Niemi's question. His understanding of a PCOC is that it is something essentially anybody can do, it just happens that the Commission is focusing on this because the Commission is dealing with regulating gaming. When one combines a PCOC with a business of gaming, then it becomes something that the Commission must deal with. **Mr. Fleisher** affirmed. Commissioner Parker noted that if one is not in the business of gaming (Safeway doing a PCOC), and uses a gambling device to conduct that PCOC, then it comes within the Commission's purview. Mr. Fleisher affirmed the authorization of that device does, the rest of the game doesn't. The gambling equipment requirement would be the same for Safeway or the card room, but the real question that is being raised is that McDonald's can say if one buys the hamburger this week, one gets an extra game piece for that purchase or an extra entry into the contest. Normally, under the law, PCOCs have to be free method of entry, anyone can participate; they don't have to buy anything, and they may enter for free. When the law changed, it said there had to be a free method of entry, but in addition, one could get additional chances to play the game by buying some product. The issue that is being raised in this rule is, whether the Gambling Commission wants the buying of a gaming activity—a hand of cards—to be allowed as a free method of entry into a PCOC. Commissioner Parker verified in this proposal, the Commission does not want that. Mr. Fleisher affirmed and noted the difference in a PCOC, which is a law the Legislature passed, applies to all businesses, and the key distinction is there is some element of chance—it's a drawing or some element of chance that decides whether you get whatever was offered as opposed to a discounted beer on Tuesday afternoons, which is a promotion. There's no element of chance if someone comes in on Tuesday afternoon, they get the beer for half price. That in essence is the promotion versus the promotional contest where a player is only going to get the benefit if they win the contest.

Commissioner Niemi said she is sympathetic with licensees wanting to get customers in during a slow time because that is reasonable. She asked why it was tied to the \$500 limit. **Gary Murray** responded that he believed it's only tied if the promotion prize value exceeds \$500. If the prize is under \$500, licensees can conduct the activity during Happy Hour or at different times -- it only becomes a problem when the prize they are trying to give away is valued over \$500. Commissioner Niemi asked if the licensees could live with that. Mr. Murray responded that their members hoped to have the flexibility to offer as big of a prize as they can afford. If commercial operators can afford to offer a motor home to a customer, he questioned how that was bad for the customer. **Mr. Berg** responded that the other side of that point goes the Legislature, who stated in the Enabling Act for the Commission, that gambling is a social activity, it is a pastime to be strictly regulated and controlled and as commercial stimulant to the business. If the basic premise is flawed, through practicality or legality, then that is something else. Until that is known, staff came forward with a conservative number—admittedly so. However, it is ten times the amount of the current number, which is \$50.

Commissioner McLaughlin asked what the difference was between Bonus 6, which was applied to the felt, and an extra turn of a wheel when a player achieves a certain hand. **Mr. Murray** responded that if it is applied on the felt, it's no longer a promotion; it's part of the rule. What the rules state, and the way they're structured -- once a player achieves a

goal the player is awarded a set prize, and everybody has an equal opportunity to win the same prize. It doesn't change every time someone else wins. The wheel spin is something the commercial operators do additionally as a bonus, and once it becomes a bonus and tied to the game, staff's position is that it is still part of the original consideration.

Commissioner Niemi said it sounded like this is statutory to a certain extent, because the statute requires that promotions have to be offered to everybody. **Mr. Murray** replied in the negative, noting the PCOC statute requires everyone to have a free entry, however, commercial operators are not allowed to give an additional entry to the gaming customer. Commissioner Niemi responded that if it is not allowed, then there's nothing that can be done. Mr. Murray disagreed, noting the Commission has the ability to tell the commercial operators they may do that. **Director Day** emphasized there is a very important distinction because if an individual is paying to get chips and then wins a chance to spin a wheel or draw a ticket out, that is essentially a raffle or a lottery. That's an illegal activity. It's not permitted in the card room license premise. Staff draws a different distinction because the customer paid the consideration originally, therefore, the two cannot be separated as they go on in the game. That part can be debated for a long time, and that is where staff has drawn the line. Staff has attempted to keep it limited to what it seems like PCOCs were designed for, which is to bring activity into the business, with no charge required. Yes, it can be connected with a food or beverage, and to leave it as independent from a gambling activity as possible. The role and control of gambling was the purpose of staff's separation. Staff is attempting to get clear defining lines as best as they can in this process. Staff has struggled over this mightily, and there was an attempt to set some overall limit on enticing or bringing people in to promote gambling. Director Day noted it wasn't the apparent attempt of the Legislature to open it up completely. Staff has simply attempted to establish a practical, clearly defined limit.

Ed Fleisher affirmed there are three issues. The \$500 limit is a proposal that staff brought forward—it's higher than the current one, and testimony is being heard that the commercials would like it even higher, or no limit. That decision is not statutory. The Commission could provide some guidance. Regarding the ability to have gambling as the additional method of entry in a PCOC, which is Section 4 (C) of .045, staff doesn't think that is statutory – it's a policy decision for the Commission. The third item, being able to spin a wheel as a promotion, staff believes is a statutory issue and it isn't directly covered in this rule. **Mr. Murray** thanked the Commission for their time and acknowledged that some licensees don't understand the subtle differences between the three or four issues addressed. He noted they have not even talked about tournaments and things like that, which are all very important issues to their industry. He emphasized the industry wants to operate their businesses in an effective and efficient manner.

Jerry Ackerman, Assistant Attorney General believed the issue the Commission was facing at this point was perhaps a tension between some schizophrenic law that the Legislature has given them (with apologies to those relevant folks) and obviously the desires of the industry. RCW 9.46.010, which is the intent of the Legislature, as declared in the enabling legislation:

"The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control. It is hereby declared to be the policy of the Legislature recognizing the close relationship between professional gambling and organized crime to restrain all persons from seeking profit from professional gambling activities in this state, ... and at the same time, both to preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes which activities and social pastimes are more for amusement rather than for profit and do not maliciously affect the public and do no breach the peace."

Mr. Ackerman noted that when the industry presents what appears to be conservative rules being proposed, like the rule that has a \$500 limit, and like rules that attempt to clearly define and perhaps limit promotions and PCOCs, that's the background that this flows from. Mr. Ackerman thought it was important to remember that at least in this state, gambling is different from selling groceries. It is different from bowling and restaurants. It is a pervasively regulated industry and that's not by accident—that is the way the Legislature wanted it. Over time, so many exceptions have been created, that it becomes very difficult to see what the import of this language is anymore. Mr. Ackerman believed that staff certainly struggled with the declared intention of the Legislature when they interpreted the other portions of the law that have been promulgated. He was not suggesting that the Commission doesn't have a great deal of policy discretion in this arena—they certainly do—and he did not think he's heard staff say anything to the contrary. He hoped that the context helped explain the very opposite views that are being proposed to the Commission by staff and by the audience. He emphasized that the Legislature starts from the position, and the Constitution starts from the position, that gambling

is illegal, and then it creates a number of exceptions and allows it to take place.

George Teeney, card room owner in LaCenter, noted that when these rules were written in 1972, there might have been a different philosophy than what is allowed today. He agreed, it is definitely a schizophrenic-type situation because on one hand, it is supposed to be for nonprofits, and it is supposed to be a stimulant, and yet the reality of life is that it is a very profitable business if it is run wisely. Mr. Teeney suggested it gets complicated when the Commission looks at a rule and wants to take something out, and says we're going to live by this part of the rule, but we're going to forget about this part because it doesn't work for us. The reality is that gaming has been accepted by society. That has been proven with the gross numbers, it has been proven by the growth of the tribal and non-tribal gaming, and charitable gaming. It has become a part of our society. Mr. Teeney appreciated the conservative approach staff has taken and that's probably been the safest route at times. The difficulty the commercial operators see with the \$50 being maximized to \$500, is that same \$50 compared to the CPI over the last 20 years, should probably reflect an increase closer to \$800. The commercials are looking at their business like any other business. Every other business in this country that deals with the PCOC is entitled to promote their business, but when it comes to gaming, the operators can't promote their business. They can promote it within certain guidelines, but those guidelines are actually nonproductive.

Mr. Teeney hoped that the industry, working with staff and the Commissioners, could come to a compromise. He noted that gaming today is not a business that is founded by the Costa Nostra. There are businessmen that are absolutely running their businesses as clean as it is possible. Mr. Teeney affirmed the Commissioners are in a position to regulate the licensees, and if licensees do anything wrong, they should be held accountable, but they should also be allowed to run their businesses in order to be profitable. **Commissioner Ludwig** believed that what Mr. Teeney really wanted was to eliminate the limit. **Mr. Teeney** affirmed.

Chair Orr called for a recess at 11:00 a.m., and recalled the meeting at 11:20 a.m., and called for further comments.

Steve Strand, Washington Charitable and Civic Gaming Association, addressed the analogy between the pull-tab and the lottery ticket, noting it speaks to the issue of gambling as a prize. He agreed one angle is certainly policy—whether one believes that we are promoting or just regulating gambling through the use of the types of gaming that are regulated, or whether or not allowing that to be used as a prize is promoting gambling or is merely another avenue of regulation, and that certainly is a policy issue. Mr. Strand affirmed this is good discussion, but he wanted to get to the logistics of how to implement this sort of thing. Addressing the pull-tab and the lottery analogy, Mr. Strand believed we're really talking about incidental prizes that are tack-ons, which are also viewed as bonuses. The nonprofit entities certainly are not looking at being able to offer gambling as a sole prize. The WCCGA does agree that the difference between a pull-tab and a lottery ticket is very minimal and would be a desired item for them. The desire is not to use it as the primary prize. Their desire is to be able to use them as incidental add-ons. Mr. Strand noted that is the kind of language they would support and want to pursue.

George Teeney wanted to make sure that it is understood that the RGA is not at odds with anybody, but they are trying to get something that works for everyone concerned. He reported that he has been in the business for 13 years, and may be one of the longest running of those to come before the Commission. His 13-year history has allowed him to watch how businesses, the Legislature, and the Commission have progressed. He recalled former Commissioner Heavey reiterating that he could not read the intent or what was on the mind of the Legislature when similar situations would arise, and then he would reference the '72-73 Act, and say he could read the law, and then make decisions. Mr. Teeney indicated that former Commissioner Heavey also advised that if intent is in question, we should look to see what the Legislature has done over the last 20 years. The Legislature, over the last 20 years has gone away from the Preamble to something other than what it was then and what it is today. He suggested the Commission look to see where the Legislature has been, and where it appears to be going because the law has changed. **Commissioner Parker** commented that as somebody who has worked in the Legislature as an attorney, he didn't believe that identifying the intent of the Legislature was a mystery. The public may read the history, read the committee reports, and the floor reports. He affirmed there are a lot of different ways of identifying what the intent of the law was.

Mr. Teeney addressed the wheel issue and whether the wheel might be a part of the gambling, or consideration. In order to spin the wheel, the consideration is to make the bet on the tables. He stated that when somebody comes to a table and makes a bet, he is giving up consideration for that particular hand. The consideration is for that hand. The wheel is an add-on; it is a bonus -- something that the commercials are willing to give away. The consideration has been given, the hand has either been paid off or lost, and the wheel is something that commercial operators are offering to these people,

especially when the wheel is full of prizes and there's no chance to lose.

Mr. Teeney also addressed promoting their businesses and emphasized that all the commercials operators are trying to do when they try to put a promotion in place is to promote their business during slow times. They could not afford to give the prize away every hour of the day that the business is open, but they certainly can afford to offer something to their customers, hopefully to get them to come in and participate. There were no other comments or questions.

15. Other Business/General Discussion/Comments from the Public.

Chair Orr reported that there were two items the Commission needed to address. One is the budget concern; and the fact that the Commission has not contracted for the September 2002 meeting. He called for a motion that the September 2002 Commission meeting be canceled in order to save money, while not adversely impacting the industry, the Commission, staff, or the licensees.

Commissioner Ludwig made a motion seconded by **Commissioner Niemi** to cancel the September meeting, for this year only, for the purpose of saving expenses.

Commissioner Ludwig explained that his rationale for the motion is based on meetings that cost between \$18,000 to \$20,000, all told, in time and cost. While that is not a large amount in the overall budget, at least it's some money the Commission could save. Eliminating one more meeting would bring this year's total down from ten meetings, to nine. **Commissioner Parker** verified the remaining meetings would be conducted in May, June, August, October, and November. **Chair Orr** affirmed.

Commissioner McLaughlin emphasized this is a Commission, and the Commission is not incidental to the agency, they are supposedly the leadership of the agency. Commissioner McLaughlin personally felt that she loses continuity when she goes 60 days without a meeting. She indicated that the only way she could support this at all was if the maker of the motion would agree to an amendment that each Commissioner would have a personal meeting with the director or his deputies during the month of September. Commissioner McLaughlin felt current issues are so big that she was uncomfortable skipping meetings. She also believed in compromise, and as a compromise she could accept skipping September if she knew that somebody was going to discuss what was going on in the agency. In the spirit of compromise, **Chair Orr** and **Commissioner Parker** suggested a conference call. **Jerry Ackerman**, Assistant Attorney General, affirmed that any two Commissioners could certainly have a conference call with Director Day, but a quorum conference call would not meet the intent of the Open Public Meeting Act.

Director Day recognized the communication issue and assured Chair Orr that if it would be helpful, he would have no problem at all contacting each Commissioner in whatever method each would find to be most beneficial, and reviewing current events or emerging issues. He committed to do that in September, in person, or via telephone. **Commissioner McLaughlin** said she would prefer having a personal meeting with the Director, although she would rather have a public meeting. She recalled three or four years ago when the licensees were very upset when the Commission thought about reducing the meetings scheduled -- they felt they paid the bill and were entitled to these meetings. She reiterated that she is personally at her best comfort level when she knows what is going. Commissioner McLaughlin stated that when she took this job, she was told that the Commissioners' responsibility was leadership of the agency and to make sure that the regulation of gambling in the state of Washington was understood.

Commissioner Ludwig, as maker of the motion, accepted Commissioner McLaughlin's suggested amendment. **Chair Orr** said he was not sure an amendment was needed because the Director affirmed he would be contacting each Commissioner. He called for comments on the motion and the suggested amendment to the motion.

Bruce Snyder, Diamond Game Enterprises, said that these meetings are held for public information and they are a great source of information to the industry. He asked if the Commission deletes a meeting and holds them in private session, whether the public would be able to obtain the minutes of the topics discussed in the meetings. **Mr. Ackerman** clarified that there is absolutely no prohibition against any one or two of the members of the Commission to seek information from the staff or the director at any point they choose. That happens routinely and minutes are not taken of those conversations and they're not published. Mr. Ackerman also noted that there is information from agency newsletters and other sources regarding the agency activity. He stated that if the Commissioners do decide to have conversations with Director Day, the significance of it not taking place with a quorum present is that no official action can take place

during these conversations. Therefore, nothing would happen behind anyone's back in the sense of a new rule being magically sprung or a new policy coming out of the Commission. What is being talked about is something the Commissioners can do any day of the week if they choose to do so and they already do that routinely -- that's part of their executive management function in the agency. Mr. Ackerman felt it was important to remember that while Mr. Day is the day-to-day face of the agency in terms of being the director, the Commissioners, in fact, are the true directors of the agency. They're the folks, that if they chose to do so, could direct the active ongoing activities of the staff.

Chair Orr reiterated that the reason he suggested canceling the September meeting was because the Commission is in hard budget times, and because the Legislature has taken \$2.45 million from the agency, and the Commission is telling staff that there will be no increases. The agency is trying to operate as efficiently as they can. There are two solutions; one is to raise fees, which are controlled by I-601, or explore every avenue possible to run as efficiently as possible. Reducing one meeting saves approximately \$20,000.

Mr. Snyder expressed concerns about individuals, operators or manufacturers that apply for licenses. Not having the September meeting may delay a process an additional 30 days, and in this industry time is money. **Mr. Fries**, Assistant Director, reported that there are only two licenses that may be held up -- manufacturers and house-banked card rooms. Mr. Snyder said that he falls into one of those categories, as a manufacturer, who would be affected. **Commissioner Ludwig** asked where Mr. Snyder's matter was on the agenda. Mr. Snyder reported they are in the process of reinstating their license, and that he was trying to compile a timeline for his superiors regarding Commission action and approval.

Senator Prentice responded that she was primarily concerned about the potential for a licensee to have to wait to have their limits raised if a meeting was deleted. **Mr. Berg** advised the rules now provide that on a Phase II, the Director has the authority to raise the table limits pending approval at the next meeting, so it is no longer an issue. Senator Prentice said that she was also leery about the public's perception that somehow the group would be trying to circumvent the open meeting law -- and she emphasized she was not suggesting that is what's happening in this case. Senator Prentice cautioned the Commission about the public believing that somehow or other, deals were being cooked up, and the public was not hearing about it. She stated there is an open meeting law; it is there for a reason, it might make people uncomfortable at times, but that we have to be able to trust it too. **Chair Orr** offered conducting meetings via satellite as a potential alternative for future consideration in an attempt to save meeting expenses. **Commissioner Ludwig** pointed out that if his memory was correct the statute only requires the Commission to hold four meetings a year.

Gary Murray, RGA, pointed out that with the September meeting being taken out of the schedule, if somebody couldn't make it to the August meeting, that leaves four months without a meeting, because there is no meeting in July. He affirmed the necessity for communication on rules and licenses. There were no further comments.

Chair Orr called for a vote. Vote taken; the motion passed unanimously.

Chair Orr reported on a second issue; the Assistant Attorney General has informed the Commission that they are not authorized to fund the Council on Problem Gambling in the manner that has been executed, and he asked for a motion to terminate the existing contract at the end of this fiscal year.

Commissioner Parker made a motion seconded by **Commissioner Niemi** to terminate the contract with the Council on Problem Gambling at the end of this fiscal year, and that the record should show that it is not the sense of the Commission that it was anything objectionable or less than meritorious about the contract or their performance; it is strictly related to the advice the Commission has received from the Attorney General's Office that the Commission has a serious legal question as to whether the Commission can make a gift of public funds under the law. With that on the record, the Commission has no choice, but to proceed with terminating the contract. **Chair Orr** called for public comment.

Gary Hanson, Executive Director, Council on Problem Gambling, said it was difficult for him to comment on this action. He said he is not an attorney so he can't argue the point with anyone. He affirmed the contract began under Frank Miller's tenure as Director and that Mr. Miller would probably have different things to say. Mr. Hanson outlined the nature of the contract and the nature of this situation. First, it's a long-standing contract -- about 10 years. The relationship goes back 10 years and the contract might be about 8 years. It has always been fairly widely supported among the industry, which is where their funding comes from. As he understood it, the contract between the

Commission and the Council was allowed via the authority of the Gambling Commission's social welfare statutory authority. He believed the Council's work has been very useful to the state and to the gambling industry. He noted that "problem gambling is the only real negative impact to legal gambling and that is what his organization has dealt with. It's been proven the Council has kept it stable and even in the current pathological area reduced it, and we were given credit for that and that is backed up by studies with other states and in comparison with other states that don't have councils or other programs like this and have expanded gambling." Mr. Hanson reported that now the Council is being called on to do even more because the Legislature passed a rule that the new Bingo ads had to have the Council's 1-800 number posted, which is going to increase their calls.

Mr. Hanson said the Council was told at the last Commission meeting that they would be facing cuts in the contract, due to budget considerations, which was understood. They were told that it would not be over half, and it would take place on July 1, 2002. His staff was dealing with that as best they could in a number of areas. Mr. Hanson reported this cuts a substantial portion of the Council's funding since at least half of their funding comes from this contract. He was not sure they would survive -- they would try, but he was not sure the numbers were going to work out in the long term. **Chair Orr** said this was difficult and certainly not anything the Commission advocates. It was something that came to their attention, and it is something they are bound to respond to. He promised that he would contact legislators, DSHS, and other people to try to figure out where other funding might be available. He suggested that Mr. Miller contact Commission staff to see what can be done. Chair Orr affirmed the Commission is in a very conflicted situation. Mr. Hanson recalled the issue regarding authorization being discussed many years ago, however, the contract became very tight at that point, so he believed the authorization issues had been worked out. He noted that during the legislative session, several bills were introduced (although they did not pass), that he believed specified the authority to the Gambling Commission to be involved in various activities linked to the Council. **Commissioner Ludwig** said he shared Chairman Orr's concern about this decision. He noted that for the entire time he has been on the Commission, he has been exposed to the good work that the Council does. He also believed, and even had the assurance from others, that everybody will continue to keep working to clarify that authorization. Assuming the Commission may be wrong now, they want to find out, and do what they can to help solve that problem. **Mr. Hanson** said he would definitely be talking to Mr. Miller, and he appreciated the Commission honoring the contract until July 1.

Senator Winsley verified the \$150,000 that Problem Gambling receives actually comes from license fees. She noted the Gambling Commission is an independent agency and is not funded out of the general fund. The money comes from the individuals who pay the license fee, and a small portion of that was allocated for problem gambling. She said she failed to see where this was a gift of public funds since they are not generated by the general fund. Senator Winsley suggested that we have until July 1 to possibly get another legal aspect of this issue, and perhaps the Commission could reduce whatever percentage of the \$150,000 we're collecting from license fees and they could give it to the Council as a charity. Senator Winsley reiterated this is a fee-generated Commission and she failed to see where it is a gift of public funds.

Commissioner McLaughlin said everyone felt as if they had been hit in the solar plexus. She asked if Mr. Hanson had ever considered becoming part of state government. **Mr. Hanson** said they have worked with many aspects of state government, including the Commission. They have certainly been trying to increase the state government's involvement. He believed the board of directors would feel that the Council is an independent nonprofit charity and, being independent, they could tweak the government to do more. He stated they have always maintained neutrality on gambling issues and that has allowed them to work with the industry without being part of the industry. However, there are a variety of members on their board representing the industry, treatment people, and recovering people. If the Council became part of the government, it would be a different organization.

Jerry Ackerman, Assistant Attorney General, said he certainly didn't take any delight in passing along the message he had to pass to the Commission, but he was asked the question and the reality is that every penny that comes into the agency from license fees, or any other source, becomes public funds the moment it hits the books of this agency. It isn't a general fund versus a license fee question. The gift of public funds issue is the second issue. The first issue the Commission has to confront is do they have the authority -- has the Legislature ever given the Commission the authority to spend money in the manner that they currently are doing. The statutes say no. If the Legislature passed a law to give that authority, then the Commission would have to confront the gift of public funds issue, which is a secondary constitutional issue. The authority they have to spend money, or the purposes that the Council on Problem Gambling has been engaged in is just to fund signs and put up signs; that's it. That's not a happy message to convey, but hopefully solutions will be worked out.

Steve Strand, Big Brother/Big Sisters, King County, echoed the sentiment that this is a significant step in the wrong direction. He stated that even though the Commission may feel forced, "the containment of the impacts of gambling is certainly what we are trying to do, and this is the downside of this industry." As the industry changes and they are required to put 1-800 numbers up that go to nowhere, they will be challenged. He questioned the terminology used regarding a gift of public money, and he submitted that this is not a gift; this is a contract for services that Commission staff could, and realistically should be charged to provide. He believed this is in the realm of the services that surround the gambling industry and that these help lines should be offered. This is a contract for services provided.

Commissioner Niemi suggested that there is no reason the industry itself can't fund the Council, and that the RGA could easily fund the Council and probably deduct a gift to a nonprofit organization. **Steve Stand** affirmed that Director Hanson would probably be on the telephone to attempt to do exactly that, so it does shift over in that context through their license fees and then subsequently contracted out, which is almost tantamount to a license fee increase.

Delores Chiechi, Executive Director, RGA, said that as a member of the industry working group on problem gambling and a member of the advisory council with the Council on Problem Gambling this is very much a concern. She advised that she attended a board meeting last month where the issue of cutting the budget contract in half was very much a concern for the board of the Council and they were trying to determine how that was going to be dealt with. Now that they have learned that the budget will be completely removed (monies received from the Commission), that, of course, increases their concern. She noted that both the RGA and its members contribute monetarily on an annual basis to the Council, and the industry would continue to work with the Council to come up with some legislation. Ms. Chiechi affirmed they will certainly determine what statutory changes need to take place in order for this to continue because it is quite a cut-off of the needs for the Council, especially at a time when the Legislature has created more of a need for the Council through the advertising requirements on the Bingos seven days a week, as well as the treatment monies that were provided to DSHS for treatment and awareness training for problem gambling.

Senator Prentice verified that Mr. Ackerman said this is not a statutory issue; it's a constitutional issue, so the legislators couldn't just come in and fix it. **Mr. Ackerman** responded that it is both. The first issue is that the Gambling Commission doesn't have the authority to spend money in this manner. The Legislature didn't pass a law saying the Commission could spend money for this purpose, and to the extent that they addressed the issue, they did it in a very limited manner of saying the Commission could spend money to put up signs. The contract, of course, because it's an attempt to be effective in this area, deals with a whole lot more than putting up signs. That is the basic statutory problem. The second issue that would have to be faced, but would only be faced if the Legislature did pass a law to give the Commission that authority, would be whether or not the Legislature had the authority to authorize—and legally, it is called a gift of public funds when one transfers funds from a state agency to another non-governmental agency. That is where the gift of public funds language comes from. It would be the same whether they were entering into a contract with a nonprofit organization like the Council on Problem Gambling, or if they entered into a contract to divert funds to any other charity or business. They simply can't do it unless there is an exception in the law. Whether the Legislature could even do this is open to question, but it is far less clear than the lack of authority that the Commission currently has.

With no further questions or comments, Chair Orr called for a vote. *Vote taken; the motion passed unanimously.*

Senator Winsley stressed this was moving in the wrong direction. For eight years the Commission has been doing this and she questioned the rush and suggested waiting, recognizing the problem, and seeing whether the Legislature should address this issue. Even if it took until next January, Senator Winsley questioned what impact another six months could have with something we've been doing for 10 years. **Commissioner Ludwig** questioned that when the Commission receives legal advice that the Commission doesn't have authority to do something, whether they should disregard such advice. **Chair Orr** commented that he appreciated Senator Winsley's support and concerns; however, he reminded the Commission that the Commission must accept its legal counsel for its own good. There were no further public comments on this issue.

Don Kaufman, General Managing Director of Big Brothers/Sisters of Spokane, commented that last month Commissioner Ludwig asked a question about what had changed in the legislation as well as the WCCG that allowed the industry to get a piece of legislation through. He noted that he had provided a response letter and some charts. He said he was available for questions. There were no comments or questions.

Chair Orr called for any other discussion or public comment. **Director Day** commented that there have been a couple of tough issues this morning, and he thanked the Commissioner for their input. Their decisions this morning were very difficult, particularly their decision regarding the September meeting. He affirmed that sometimes when there is a budget cut, people anticipate that nothing is going to change. Director Day acknowledged that the Commissioners take very seriously their charge to serve on the Commission and to supply the opportunities for licensees to get approved. Director Day expressed appreciation for their decision because he believed it demonstrates to the agency that the Commission understands the seriousness and is willing to help support that effort. Staff also appreciated their leadership in this venue. There were no more questions.

16. Adjournment:

With no further business, Chair Orr adjourned the meeting at 12:05 p.m.

Minutes submitted by:

Shirley Corbett
Executive Assistant